

COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair
DELEGATE DANIEL MARSHALL, III, Vice-chair
ELIZABETH A. PALEN, Executive Director



GENERAL ASSEMBLY BUILDING
201 NORTH 9th STREET, SECOND FLOOR
RICHMOND, VIRGINIA 23219
(PHONE) 804-786-3591 ext. 259
(FAX) 804-371-0169
epalen@dls.virginia.gov
<http://dls.virginia.gov/commissions/vhc.htm>

VIRGINIA HOUSING COMMISSION

SUMMARY

Common Interest Communities Work Group House Room C, General Assembly Building June 20, 2013, 10:00 a.m.

Members present: Delegate John A. Cosgrove, Delegate David Bulova, Delegate Barry Knight; Janice Burgess, *Virginia Housing Development Authority*; Heather Gillespie, *Common Interest Communities Ombudsman*; Trisha Henshaw, *Common Interest Communities Board*; Mike Inman, *Community Association Institute*; Ronald P. Kirby, *Virginia Association of Community Managers*; Michael Toalson, *Home Builders Association of Virginia*; Pia Trigiani, *Common Interest Communities Board*; and Jerry Wright, *Community Associations Institute*

Staff: Elizabeth Palen, *Director of Virginia Housing Commission*

Delegate Cosgrove called the meeting to order at 10:05.

Several speakers, each who represented various homeowner associations in the Northern Virginia area, spoke about their concerns regarding rules and regulation enforcement.

Gorden Boezer of Westridge.

Mr. Boezer gave a sketch of Westridge: It is composed of 15,000 units, including subsidized housing, single-family homes, and town homes, and it is supported by a neighborhood board. It also has a Board of Trustees, two standing committees, and two paid managers on staff. The facility includes four swimming pools, a lake, and four and one-half miles of roads (maintained by prince William County), tennis courts, and a club house. The services include security and safety features, such as hiring of off-duty police officers. There are some private roads, trash collection, rain water management, erosion control measures, and civic organizations such as Girl Scout and Brownie troops. It is estimated that 5,000 people live in the community that includes some private and some public spaces. The objective of the community is to protect, preserve, and enhance the property values of the area.

There are adverse consequences concerning sale/disclosure packets, they must be tracked; need simpler-to-understand packets and there is a need to simplify language in the packets.

\$1.6 million in homeowner dues are collected annually, and there is a need for efficiency in operation. Currently, it is subject to a patchwork collection system. If residents do not pay their fees in a timely manner, there are late fee charges, which are now a 5% penalty after 60 days. These don't cover association costs. There is a need to have dues and fees cost more than recovery, otherwise they need to spread cost to meet obligation.

DELEGATE DANIEL W. MARSHALL, III
DELEGATE DAVID L. BULOVA
DELEGATE ROSALYN R. DANCE
DELEGATE BARRY D. KNIGHT

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR GEORGE L. BARKER

MARK K. FLYNN
LAURA D. LAFAYETTE
T.K. SOMANATH

Costs are \$200 in quarterly dues for a single family, which varies by neighborhood, and condos pay for more services. Violations are investigated, and if a homeowner has a plan to pay for unpaid dues, the association will work with the homeowner to develop a plan to pay.

Additionally, there is a need for a governance overhaul. They currently have some bad governance documents. The goal is to work toward compliance and the organization cannot amend the by-laws without a 90% consensus of all homeowners in the association.

Delegate Knight asked whether the 90% was imposed by the original documents. Was it deliberately to make it difficult to change? Is there a way to make modifying the documents easier?

Pia Trigiani responded by replying that there is no legislative fix, the organizations are bound by their own documents. The Condominium Act narrowed the authority of associations.

Gayle Whitlock, Board President of Lake Ridge.

Lake Ridge has 4,000 acres and 12,000 acres of common ground. This is the 41st year it has been the second largest association in Virginia, and is the fourth largest in the nation.

It has five pools, tot lots, tennis courts, basketball courts, staffed recreation, 32 miles of private roads, 50 people on staff, and 73,000 members.

The organization needs tools that can be used for collection purposes.

Assessments are capped at 5% each year. There is a need for a special assessment but the current by-laws make that very difficult.

Ron Kirby asked what their documents require.

Ms. Whitlock replied that 75% of the residents have to agree to a change in order for a special assessment.

Kathleen Snyder, Kingstown, president for 23 years.

Kingstown is composed of 54,000 homes, 12,000 acres, 17,000 residents (size of Falls Church or Fairfax City), and 600 acres groomed and landscaped. There are 44 neighborhoods, five pools, and three community centers.

The Association performs municipal duties, including the plowing of 10 miles of roads and storm water management for 35 acres. The association has done a good job for 30 years; this is the sixth time they have conducted a five-year survey. People want the facilities maintained and the property values to go up.

Out of 34,000 units; there are 1,900 architectural violations and 14 cases left unresolved. The Association wants the ability to fine.

Ms. Snyder asked that the Legislature allow homeowner associations to adopt and enforce rules and penalties without the super majority necessary as currently stated in the by-laws.

It appears all the homeowner association documents in the region are documents created in the early 1980s and are boiler-plate documents. Each has the provision, that requires approximately 90% of the residents' votes to approve any change in bylaws and does not give the Board broad authority.

Denise Harover, Manchester Oaks homeowner association.

Ms. Harover reported on a court action that occurred last spring in circuit court, involving this community development corporation :*Shadowood (condo) changes to a particular owner) v Fairfax Redevelopment and Housing Authority*. The Circuit Court, reacting to the statute, said authority had to be directly stated and had to read OR as AND. Fairfax prevailed in the suit, and it is currently on appeal by the association.

In Shadowood's case, there was a question of due process and procedure and whether or not the association could impose changes akin to local government, and if it could have written standard procedures and notification of a violation through certified mail.

Currently in Shadowood, you can only impose a fine for common area infractions.

Loudoun Circuit Case Authority relied on an unpublished opinion whose only authority is precedential and was created in 1974. It was found that the Association exceeded the authority of its documents and that there were contravening documents. In the footnote, the court may have made a stronger recommendation.

In Manchester Oaks, they wish to collect assessments but are not debt collectors (cannot misrepresent debt); and they are looking to distinguish debt as not the same as collecting an authorized charge (fine) or suing to collect in Class Action suits.

In Summary:

All the organizations who spoke today want right to go to District Court instead of Circuit Court. They are willing to have voluntary compliance but would like an enabling statute to enforce the rule changes.

The organizations all had representatives who spoke about wishing that their association's rule enforcement could go through a due process change to mirror local level government. Each would like to be able to use the General District Court to sue for charges, but without express authority they cannot proceed in General District Court and now have to go to Circuit Court.

Collectively this group has expressed a need to amend their own documents; but without achieving the current majority of association homeowners and they ask for legislation to allow them to do so. They believe the common interest community needs the ability to fine.

The organizations are dealing with boiler-plate documents adopted in the early 1980s and need 90% of homeowners to give board broad authority. They expressed interest in having the legislature facilitate the ability to change the documents.

Ron Kirby commented that community management firms are affected. There needs to be a due process procedure to impose charges akin to acting as a local government. As long as there are written standard procedures and residents are notified of a violation by certified mail perhaps this should be allowed to be done.

Bill Mar, the Vice-Chair of Legislative Action Community Institutes, said there are more than 10,000 homeowner associations, and only one-half of them are registered with the state of Virginia. Also, there is no Condominium Act provision for merger.

Hearing no public comment **Delegate Cosgrove** adjourned the meeting at 11:40 AM.